

It is improper for the Respondent on one hand to seek dismissal under Rule 12(b)(1) asserting that subject matter jurisdiction under *McAnnulty* is separate from the APA, then later argue in the same case that *McAnnulty* is not jurisdictional. *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001). Respondent previously opposed review in this Court on the issue of whether *McAnnulty* is a doctrine of equity jurisdiction separate and apart from the APA, and now finds itself arguing in opposition to the decision of the Fourth Circuit which did conclude that "the *McAnnulty* doctrine" [is] a doctrine of equity jurisdiction apart from the APA." *ISC v. Rogan*, 357 F.3d at 457; App. 29.

CONCLUSION

For the foregoing reasons Petitioner respectfully requests that this Court grant its Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

EDWARD B. FRIEDMAN
Counsel of Record
J. STEPHEN PURCUPILE
FRIEDMAN AND FRIEDMAN
900 Fifth Avenue
Pittsburgh, PA 15219
Tel. (412) 261-5834
Fax (412) 261-0350

*Attorneys for Petitioner
Invention Submission Corporation*

RICHARD C. SULLIVAN, JR.
REEDSMITH, LLP
Suite 1400
3110 Fairview Park Drive
Falls Church, VA 22042-3844
Tel. (703) 641-4200
Fax (703) 641-4340